

Food Establishment Ordinance

Ordinance No. 1998- 06

Spencer County, Indiana

An ordinance pertaining to restaurants, retail food stores, bed and breakfast establishments, temporary food establishments, mobile food establishments, push carts, commissaries, vending machines, and other food service establishments; requires fees for inspection of food establishments; prohibits sale of adulterated, unwholesome, or misbranded food; regulates inspection of such establishments; provides for enforcement of this ordinance; provides penalties for violations of said ordinance; and incorporates by reference the following Indiana State Department of Health Rules; 410 IAC 7-15.1, Bed and Breakfast Establishments; 410 IAC 7-16.1, Retail Food Store Sanitation Requirements; and 410 IAC 7-17, Sanitation of Vending of Foods and Beverages.

Be it ordained by the Board of Commissioners of Spencer County, State of Indiana that:

SECTION A: LICENSE REQUIREMENTS, PROCEDURE FOR ISSUANCE, FEES, AND EXEMPTIONS

(1) It shall be unlawful for a person to operate a food establishment, bed and breakfast establishment, mobile food establishment, temporary food establishment, or push cart in Spencer County, who does not possess a valid license from the Health Department.

(2) Such license may be provided by the County Health Department if a completed application is presented.

(3) Only Persons who comply with the applicable requirements of 410 IAC 7-15.1, Food Service Sanitation; 410 IAC 7-15.5, Bed and Breakfast Establishments, 410 IAC 7-16.1, Retail Food Store Sanitation Requirements; and 410 IAC 7-17, Sanitation of Vending of Foods and Beverages, shall be entitled to retain such a license.

(4) The license for a food establishment shall be for a term of one year, beginning January 1st and expiring December 31 of the calendar year and shall be renewed annually. The fee for the license shall be due and payable between January 1st through January 31st of the current calendar year. Failure to pay the fee for the renewal of a license between January 1st through January 31st of the current calendar year shall result in a ten dollar (\$10.00) late fee. The delinquent fee shall be in addition to the annual fee.

(5) The fee for a new food establishment shall be prorated as follows:

- (a) A person obtaining a license prior to July 1st shall pay the full amount of the regular annual license fee;
- (b) A person obtaining a license on or after July 1st shall pay half of the regular annual license fee.

(6) A separate license shall be required for each food establishment, bed and breakfast establishment, mobile food establishment or push cart operated or to be operated by any person.

(7) No new license shall be issued and no license shall be renewed until all outstanding fines and fees are paid in full.

(8) Any license issued by the Health Department shall contain the name of the person to whom the license is granted, and any such pertinent data as may be required by the Health Department. The license shall be posted in a *conspicuous* place in the food establishment.

(9) A license is **not transferable** to another location or to another person. In the event of a change of ownership by conveyance, sale contract, lease, or other means, the current license shall become void and a new license shall be required. A license shall not be issued to a food establishment under new ownership until it is in *full compliance* with all applicable State and local laws.

In the event the Health Department is not notified of a change of ownership of a food establishment, a license for the next year shall not be issued until:

- (a) the food establishment is in *full compliance* with all applicable State and Local Laws, and
- (b) all outstanding fines and fees are paid for in full.

(10) No license shall be required and no fee for services shall be paid for a food establishments operated by religious, educational, or charitable organizations. However, such establishments shall comply with the other provisions of this ordinance and are subject to inspection and approval by the health officer or authorized representative.

(11) An organization that is exempt from the Indiana gross income tax under IC 6-2.1-3-20 through IC 6-2.1-3-22 and that offers food for sale to the final consumer at an event held for the benefit of the organization is exempt from complying with the requirements of the ordinance that may be imposed upon the sale of food at that event if:

- (a) a copy of the tax exempt certification form shall be provided as a proof to the Spencer County Health Department to be kept on file;
- (b) members of the organization prepare the food that will be sold;
- (c) events conducted by the organization under this section take place for no more than thirty (30) days in any calendar year; and
- (d) the name of each member who has prepared a food item is attached to the container in which the food item has been placed.

This section does not prohibit an exempted organization from waiving the exemption and applying for a license under this ordinance.

SECTION B : MINIMUM REQUIREMENTS

All food establishments, bed and breakfast establishments, and vending machines shall comply with the minimum requirements of Rules 410 IAC 7-15.1, 410 IAC 7-15.5, 410 IAC 7-16.1 and 410 IAC 7-17, two copies of which are on file in the office of the Auditor of Spencer County, Rockport, Indiana, for public inspection.

All food establishments, bed and breakfast establishments may be required to attend a Food Service Training as required by the Spencer County Health Department. Notice of any required food service training shall be given by the Spencer County Health Department at least 14 days in advance by delivering a written notice by first class mail.

SECTION C: SALE, EXAMINATION, AND CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD

(1) It shall be unlawful for any person to sell through a food establishment, mobile food establishment, temporary food establishment, bed and breakfast establishment, or vending machine, any food which is unwholesome, adulterated or misbranded as provided in the Indiana Food, Drug, and Cosmetic Act, IC 16-1-28 through IC 16-1-31.

(2) Samples of food may be taken and examined by the health inspector as often as may be necessary to determine freedom from contamination, adulteration, or misbranding. The health inspector may impound and forbid the sale of any food which is unwholesome, adulterated or misbranded, or which he/she has probable cause to believe is unfit for human consumption, unwholesome, adulterated or misbranded; provided that in the case of misbranding which can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the health inspector. The health inspector may also cause to be removed or destroyed any dairy products, meat, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit or other perishable articles which in the health inspector's opinion are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe.

SECTION D: FOOD ESTABLISHMENT INSPECTION CORRECTION OF VIOLATIONS, AND REVOCATION OF LICENSE

(1) The health inspector may inspect each food establishment whatever frequency the health inspector determines appropriate, under the provisions of this ordinance, and the Indiana code and applicable regulations.

(2) The person operating the food establishment, or mobile food establishment shall, upon the request of the Health Inspector, permit the Health Inspector access to all parts of such food establishment, or mobile food establishment and shall permit the Health Department to collect evidence and exhibits, and to copy any or all records relative to the enforcement of this ordinance.

(3) If during the inspection of any food establishment the health inspector discovers the violation of any of the requirements of this ordinance or the Indiana code, a written inspection report listing such violations shall be issued to the proprietor or, in his absence to the person in charge, and fixing a time within which the proprietor of the food establishment shall abate and remedy such violations. A copy of the written inspection report shall be filed with the records of the health department. In addition, the Health Inspector may order the temporary suspension of any license in accordance with the terms in Section E.

(4) If, upon a return inspection, the health inspector finds that such food establishment, person, or employee is in violation any of the provisions of this ordinance which were in violation on the previous inspection, and concerning which a written inspection report was issued the health inspector may elect one of the following remedies:

- (a) Issue an immediate temporary suspension of their license pursuant to the terms of Section E below.
- (b) Issue a written citation, and assess a fine in the amount of \$50.00 for each continuing violation. Each day of operation in violation of the provisions of this ordinance shall constitute a distinct or separate offense. Upon correction of the repeated violation the Spencer County Health Department must be notified so the fine does not continue to accrue.
- (c) Issue a written Order to the owner of the food operation to appear at a certain time, no later than ten days from the date of inspection, and at a place in Spencer county fixed in the Order to show cause why the license issued under the provision of Section A., should not be revoked.
- (d) Furnish evidence of the violation(s) to the Spencer County Prosecutor, for prosecution of violations of the provisions of this ordinance.

(5) If at the administrative hearing the owner or person in charge should fail to show cause as to why his/her license should not be suspended or revoked, the Health Department shall suspend or revoke the license of such food establishment of such action to the owner or person in charge. The Health Department shall maintain a permanent record of its proceedings which shall be filed in the office of the Health Department.

SECTION E: TEMPORARY SUSPENSION OF LICENSE

(1) Any license issued under this ordinance may be temporarily suspended by the Health Department without notice or hearing after an initial or subsequent inspection for a period not to exceed thirty (30) days for any of the following reasons:

- (a) an imminent health hazard, in which the food establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the Health Department.
- (b) insanitary or other conditions which in the health inspector's opinion endanger the public's health,
- (c) interference with the health inspector in performance of duties, and /or,

- (d) undue harassment of Health Department inspector in the performance of duties.

Upon written application from the owner or from the person in charge, served upon the Health Department within thirty (30) days after the suspension, the health officer will conduct a hearing upon the matter after giving at least five (5) days written notice of the time, place, and purpose thereof to the suspended owner; provided, further, that any suspension order shall be issued by the Health Department in writing and served upon the owner by leaving a copy at his usual place of business or by delivery of Registered or Certified Mail.

(2) Any person whose license has been suspended may at any time make application to the Health Department for the reinstatement of his/her license.

SECTION F: INSPECTION OF TEMPORARY/MOBILE FOOD ESTABLISHMENT

(1) At least once in each 24-hour period the Health Department may inspect each temporary food establishment, or at whatever frequency determined appropriate, under the provision of this ordinance.

(2) If during the inspection of any temporary food establishment the Health Department discovers the violation of any of the requirements of this ordinance, the health inspector may order the immediate correction of the violation(s).

(3) Upon failure of any person maintaining or operating a temporary food establishment to comply with any order of the Health Department, the Health Department may summarily forbid the further sale or serving of food therein and require said food establishment be removed from the premises at that time. Failure by the person operating the food establishment to comply may result in referral to a law enforcement officer.

SECTION G: SUBMISSION AND APPROVAL OF PLANS FOR CONSTRUCTION OR ALTERATION OF A FOOD ESTABLISHMENT OR MOBILE FOOD ESTABLISHMENT AND PRE-OPERATION INSPECTION

(1) Whenever a food establishment or mobile food establishment is constructed or extensively remodeled, or whenever an existing structure is converted for use as a food establishment or mobile food establishment, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the Health Department before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction material of work areas, and the type and model of proposed fixed equipment and facilities. The Health Department shall approve the plans and specification if they meet the requirements of this ordinance. No food establishment or mobile food establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the Health Department.

(2) When plans and specifications required by Section G of this ordinance are to be submitted to the Health Department, the Health Department shall inspect the food establishment or mobile food establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this ordinance.

SECTION H: PENALTIES FOR VIOLATIONS

In addition, to any civil penalty that may be otherwise imposed by this ordinance or, under Indiana law, any person who violates any provisions of the ordinance shall be deemed guilty of a class B misdemeanor. A person who commits a class B misdemeanor may be fined not more than one thousand dollars (\$1000.00).

SECTION I: SEVERABILITY

Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of said ordinance shall not be affected thereby.

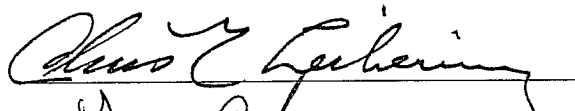
SECTION J: ENFORCEMENT

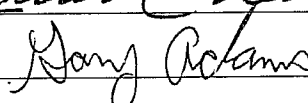
This ordinance shall be enforced by the Health Department, with the assistance of the Spencer County Attorney, or his appointed deputies and, in appropriate cases, by the Spencer County Prosecuting Attorney.

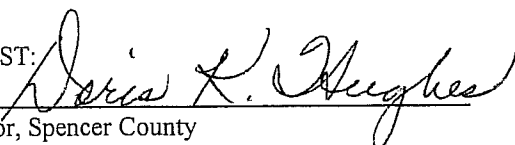
SECTION K: REPEAL AND DATE OF EFFECT

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect immediately upon its adoption and its publication as provided by law.

Passed and adopted by the Commissioners of Spencer County, State of Indiana, on the 6 day of April, 1998.





ATTEST: 

Auditor, Spencer County